

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

WESLEY E. GRESHAM,

Petitioner,

V.

Case No. 1:19-cv-327-SPB-RAL

WARDEN FCI McKEAN,

Respondent.

MEMORANDUM ORDER

The petition for a writ of habeas corpus in this case was received by the Clerk of Court on November 12, 2019 and was referred to United States Magistrate Judge Richard A. Lanzillo for report and recommendation (“R&R”) in accordance with the Magistrate Judges Act, 28 U.S.C. §636(b)(1), Federal Rule of Civil Procedure 72(b), and the Local Civil Rule 72(D). ECF No. 1. Petitioner, Wesley E. Gresham (“Gresham”), is a federal inmate currently housed at FCI-McKean. Respondent filed an answer on February 10, 2020, ECF No. 7, and Gresham filed a reply on February 24, 2020. ECF No. 8.

On October 4, 2021, Magistrate Judge Lanzillo issued an R&R recommending that the Petitioner’s claims be dismissed for lack of jurisdiction. ECF No. 9. Judge Lanzillo reasoned that Gresham was attacking the *validity* of his sentence rather than its *execution*, and he had failed to show that relief under § 2255 would be “ineffective or inadequate to test the legality of his detention,” as set forth in in §2255(e) and discussed in *In re Dorsainvil*, 119 F.3d 245 (3d Cir. 1997), and *Bruce v. Warden Lewisburg USP*, 868 F.3d 170, 178 (3d Cir. 2017). *Id.* Therefore, Judge Lanzillo concluded, Gresham could not pursue habeas relief under §2241.

Objections to the Report and Recommendation were due to be filed no later than October 21, 2021. To date, no objections have been filed.

After *de novo* review of the petition and documents in the case, together with the Report and Recommendation, the following order is entered:

NOW, this 10th day of November, 2021, IT IS ORDERED that the within petition for writ of habeas corpus shall be, and hereby is, DISMISSED for lack of jurisdiction.

IT IS FURTHER ORDERED that the Report and Recommendation of Magistrate Judge Lanzillo, issued on October 4, 2021, ECF No. [9], shall be, hereby is, adopted as the opinion of this Court.

As there are no further matters pending before the Court relative to the instant petition, the Clerk is directed to mark this case "CLOSED."



SUSAN PARADISE BAXTER
United States District Judge

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The Honorable Richard A. Lanzillo
(via CM/ECF)